

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

HOWARD SMITH, 04-R-2402,

Plaintiff,

v.

ORDER
08-CV-596A

C.O. LYONS and K. ULRICH,

Defendants.

The above-referenced case was referred to Magistrate Judge Jeremiah J. McCarthy, pursuant to 28 U.S.C. § 636(b)(1)(B). On June 26, 2009, Magistrate Judge McCarthy filed a Report and Recommendation, recommending that defendants' motion for partial dismissal of plaintiff's complaint be granted, and that all of plaintiff's claims, with the exception of his Eighth Amendment claim for excessive use of force, be dismissed.

The Court has carefully reviewed the Report and Recommendation, the record in this case, and the pleadings and materials submitted by the parties, and no objections having been timely filed, it is hereby

ORDERED, that pursuant to 28 U.S.C. § 636(b)(1), and for the reasons set forth in Magistrate Judge McCarthy's Report and Recommendation, defendants' motion for partial dismissal of plaintiff's complaint is granted, and all of plaintiff's claims, with the exception of his Eighth Amendment claim for excessive use of force, are dismissed.

The case is referred back to Magistrate Judge McCarthy for further proceedings.

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATED: July 17, 2009